TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 713

DAVID H. BLAIR, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

UNITED STATES EX REL. G. THOMAS BIRKENSTOCK AND GERALD RONON, EXECUTORS, ETC.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED AUGUST 28, 1925

CERTIORARI GRANTED OCTOBER 26, 1925

(31436)

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1 [Caption omitted]

In Supreme Court of the District of Columbia

UNITED STATES, EX RELATIONE, G. THOMAS BIRKENSTOCK and Gerald Ronon, executors of the last will of Margaret Murphy, deceased, petitioners, vs. DAVID H. BLAIR, COMMISSIONER OF INTERNAL REVENUE, respondent.	At Law No. 69285

Petition for writ of mandamus

Filed September 3, 1924

The petition of G. Thomas Birkenstock and Gerald Ronon, executors of the last will of Margaret Murphy, deceased, respectfully represents to the court as follows:

1. The petitioners, G. Thomas Birkenstock and Gerald Ronon, both of Philadelphia, Pennsylvania, are the executors of the last will and testament of Margaret Murphy, late of Overbrook, Pennsylvania, who died on December 27, 1923, letters testamentary having been granted to petitioners on December 31, 1923, by the register of wills of Montgomery County, Pennsylvania.

2. The respondent, David H. Blair, is Commissioner of Internal Revenue of the United States and is charged by law with the duty of refunding and paying back all income taxes erroneously or illegally collected (revenue act of 1924, section 1011), with interest on the amount of such refund at the rate of 6 per centum per annum from the date the tax was paid to the date of the allowance of the refund in accordance with the following provision of the revenue act of 1924:

"SEC. 1019. Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at
2 the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or, in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term 'additional assessment' as used in this section means a further assessment for a tax of the same character previously paid in part."

3. The testatrix, Margaret Murphy, paid to the collector of internal revenue at Philadelphia, as her income tax for 1919, $22,239.23 on April 13, 1920, $22,239.23 on June 10, 1920, $22,239.23 on Sep-

tember 27, 1920, and $22,239.23 on December 13, 1920, or a total of $88,956.92 income tax paid by her for 1919.

4. The respondent subsequently determined that testatrix' income tax for 1919 should only have been $53,902.07, and that $35,054.84 had therefore been erroneously or illegally collected; and having also ascertained that testatrix did not owe to the United States any other taxes against which such $35,054.84 or any part thereof should be credited, respondent, on or about August 20, 1924, approved and signed a schedule addressed to the disbursing clerk of the Treasury Department in which he allowed the sum of $35,054.85 as refundable and authorized its payment, with interest thereon of $1,057.41, although payment of neither of these amounts has as yet actually been received.

5. The interest of $1,057.41 thus authorized represents interest at 6 per centum per annum on $35,054.84 for less than seven months whereas under the law (revenue act of 1924, section 1019) interest should have been authorized and should be paid for at least three years and five months on the entire amount of the proposed refund and for even longer periods on portions thereof.

6. Each of the four installments of the testatrix' income tax for 1919 recomputed as provided by law (revenue act of 1918, section 250 (b), 40 Stat. 1083) would be $13,475.52, whereas four installments of $22,239.23 each were actually paid as more fully set forth in paragraph 3 of this petition. Interest should therefore be allowed and paid on $8,763.71 from April 13, 1920, on $8,763.71 from June 10, 1920, on $8,763.71 from September 27, 1920, and on $8,763.71 from December 13, 1920, in each case at least until on or about August 20, 1924.

7. The petitioners, after inquiring at the office of respondent and being advised that interest had been authorized only in the amount of $1,057.41, thereupon on or about August 25, 1924, made through their attorney the following formal demand upon the respondent to authorize and direct the payment of the additional interest to which petitioners in their capacity as executors are entitled under the law:

JAMES CRAIG PEACOCK,
ATTORNEY AND COUNSELLOR AT LAW,
ALBEE BUILDING, 15TH AND G STREETS NW.,
Washington, D. C., August 25, 1924.

Honorable DAVID H. BLAIR,
Commissioner of Internal Revenue.

DEAR SIR: Reference is made to the refunds of overpayments of income tax due 1919 which are being made to three of my clients in the following amounts: Margaret Murphy, Philadelphia, Pa., $35,054.84; John A. Murphy, Philadelphia, Pa., $5,655.37; and Joseph L. Murphy, Philadelphia, Pa., $3,843.50.

These amounts were originally listed as overassessments and sent to the collector at Philadelphia on Schedule #10274 on or about May 19, 1924, and I understand that a schedule authorizing and allowing

the same amounts as refundable was forwarded to the disbursing officer on or about August 12, 1924.

I am, however, advised by your office that interest has been computed and authorized only in the following amounts: Margaret Murphy, $1,057.41; John A. Murphy, $170.59; and Joseph L. Murphy, $115.94. These amounts are obviously computed from the date six months after the filing of the several claims for refund to May 19, 1924.

It is my understanding that under section 1019 of the revenue act of 1924 a claim for refund is not allowed until it is paid, or that in any event it is not allowed until the schedule authorizing and allowing the amount as refundable is signed by the commissioner and sent to the disbursing officer, which in the above cases apparently occurred on or about August 12, 1924.

In accordance with the provisions of section 1019 of the revenue act of 1924 interest should therefore be paid in each of the above cases from the date of the original payment of the tax to the date of the payment of the refund or in any event from the date of the original payment of the tax to the signing of the schedule authorizing and allowing the amounts as refundable, which in these cases was on or about August 12, 1924. In behalf of the above-mentioned clients I ask you to authorize and direct the disbursing officer to pay to the said taxpayers the additional interest which should be allowed and paid to them on these refunds. It would be greatly appreciated if you would advise me at your early convenience whether this request will be acceded to. Powers of attorney to the undersigned from all of the above-mentioned taxpayers are on file in your office.

Very truly yours,

(Signed) JAMES CRAIG PEACOCK.

JCP/mad

but the respondent under date of August 29, 1924, made the following formal refusal to comply therewith:

TREASURY DEPARTMENT,
Washington, August 29, 1924.

IT:R:CC:ECW

Mr. JAMES CRAIG PEACOCK,
Albee Building, 15th & G Streets, Washington, D. C.

In re: Margaret Murphy, John A. Murphy, Joseph L. Murphy, Philadelphia, Pa.

SIR: Reference is made to your letter dated August 25, 1924, in which it is stated that in your opinion interest should be allowed under section 1019 of the revenue act of 1924, on amounts refunded to the above-named taxpayers in connection with Schedule IT:A–10274, from the dates of payment of the tax to August 12, 1924, on
4 or about which date you state the schedule authorizing and allowing the amounts as refundable was sent to the disbursing office of the department.

In reply you are informed that the overassessment referred to were allowed on a schedule signed by the commissioner on May 19, 1924. It is held, therefore, that the allowance of interest on the amounts refunded is governed by the provisions of section 1324-a of the revenue act of 1921.

Such section 1324-a of the act of 1921 provides:

"That upon the allowance of a claim for the refund of or credit for internal revenues taxes paid, interest shall be allowed and paid * * * to the date of such allowance,"

and section 1019 of the revenue act of 1924 similarly provides for the payment of interest to the date of allowance. It has been consistently held by the department that these provisions fixing the termination of the interest period are to the same effect in both acts and, therefore, interest is payable to the date of the schedule upon which the overassessment is allowed.

For the foregoing reasons you are informed that the interest allowances made in the cases in question are apparently correct.

Respectfully,

(Signed) J. G. BRIGHT,
Deputy Commissioner.

8. The petitioners further allege that demand having been made by the respondent to authorize and direct payment of the additional interest due to them and such demand having been refused, this action on the part of the respondent was unwarranted under the revenue act of 1924, and the computation, allowance, and authorization of interest by the respondent being a ministerial act required of him by law and not necessitating any exercise of discretion, petitioners are entitled to relief in this court.

9. The petitioners state that prior to their coming into this court they have exhausted all the remedies open to them to obtain the authorization and allowance by the Commissioner of Internal Revenue of the additional interest due to them under the revenue act of 1924, and that their requests have been unlawfully and unjustly denied, and that there is no other course open to them but to petition this court.

Wherefore, the premises being considered, the petitioners pray:

1. That a rule may issue directing the respondent to appear before this honorable court and show cause, if any there be, why a writ of mandamus should not be issued commanding and directing respondent to compute and allow interest at the rate of six per centum per annum on $8,763.71 from April 13, 1920, on $8,763.71 from June 10, 1920, on $8,763.71 from September 27, 1920, and on $8,763.71 from December 13, 1920, in each case to August 20, 1924, and to authorize and direct the proper disbursing officer to pay to the petitioners the amount by which the sum of such four items of interest exceeds $1,057.41.

2. That a writ of mandamus may issue to said respondent, commanding and directing him to compute and allow interest at the rate of six per centum per annum on $8,763.71 from April 13, 1920, on $8,763.71 from June 10, 1920, on $8,763.71 from September 27, 1920, and on $8,763.71 from December 13, 1920, in each case to August 20, 1924, and to authorize and direct the proper disbursing officer to pay to the petitioners the amount by which the sum of such four items of interest exceeds $1,057.41.

3. For such other and further relief as the nature of the petition may require.

G. THOMAS BIRKENSTOCK and GERALD RONON,
Executors of the last will of Margaret Murphy, deceased.
By JAMES CRAIG PEACOCK,
Attorney for Petitioners.

[Duly sworn to by G. Thomas Birkenstock and Gerald Ronon; jurat omitted in printing.]

JNO. W. TOWNSEND,
Of Counsel.

In Supreme Court of District of Columbia

Rule to show cause

Filed September 3, 1924

* * * * * * *

Upon consideration of the petition of G. Thomas Birkenstock and Gerald Ronon, executors of the last will of Margaret Murphy, deceased, filed in the above-entitled cause on the 3rd day of September, 1924, it is by the court this 3rd day of September, 1924,

Ordered, that the respondent, David H. Blair, Commissioner of Internal Revenue of the United States, appear in this court at ten o'clock a. m. on the 19th day of September, 1924, and show cause, if any he have, why the prayer of said petitioners should not be granted and a writ of mandamus issued against him as therein prayed; provided, however, a copy of this order be served upon said respondent on or before the 6th day of September, 1924.

By the court:

F. L. SIDDONS,
Justice.

Marshal's return. Filed September 16, 1924

Served a copy of the within rule on David H. Blair, Com. Int. Revenue, personally: 9/3/24.

E. C. SNYDER,
U. S. Marshal.

F

6 In Supreme Court of District of Columbia

Answer. Filed September 29, 1924

* * * * * * *

David H. Blair, Commissioner of Internal Revenue, respondent herein, now and at all times saving and reserving unto himself the benefit of all manner of objections and exceptions as to the errors and insufficiencies in the petition filed herein, and reserving unto himself the lack of jurisdiction of the court appearing on the face of said petition to grant the relief prayed for and the lack of jurisdiction of the court to direct him as Commissioner of Internal Revenue to perform the act or acts in question, and relying on the same as if motion to dismiss had been sufficiently interposed, nevertheless, answering so much and such parts of the petition and the rule to show cause as he is advised it is material and necessary for him to make answer unto, says as follows:

1. He admits the allegations of paragraph 1.

2. While admitting that he is Commissioner of Internal Revenue of the United States, he says that he is advised that the other allegations of paragraph 2 amount to mere conclusions of law and need not be answered.

3. He admits that the testatrix, Margaret Murphy, paid to the collector of internal revenue at Philadelphia as her income tax for the year 1919 a total sum of $88,956.92 and that said sum was paid in four installments of $22,239.23 each, but he avers that the installments were paid on April 15, 1920; June 16, 1920; September 15, 1920; and December 15, 1920, instead of the dates shown in paragraph 3.

4. Respondent denies the allegations of paragraph 4, except as herein expressly admitted.

He admits that subsequent to the dates mentioned in paragraph 3 of the petition he determined that testatrix' income tax for 1919 should only have been $53,902.07 and that $35,054.85 had therefore been erroneously or illegally collected.

He admits that he ascertained that testatrix did not owe to the United States any other taxes against which such $35,054.85 or any part thereof should be credited.

Respondent is without knowledge as to whether payment has actually been received by petitioners of the said sum of $35,054.85 with interest thereon of $1,057.41, but avers that check No. 471972 for the sum of $35,054.85 with interest thereon of $1,057.41 was issued and mailed under date of August 25, 1924.

5. He admits that the interest of $1,057.41 thus authorized represents interest at six per centum per annum on $35,054.85 for less than seven months, and further answering avers that interest included in said check No. 471972 was computed at six per centum per annum from November 18, 1923, six months after the date of

filing of testatrix' claim for refund to May 19, 1924, the date of allowance of refund.

As to each and every other allegation of paragraph 5 he says that he is advised that they amount to mere conclusions of law and need not be answered.

7 6. He admits that four installments of $22,239.23 each were actually paid by testatrix as set forth in paragraph 3 of the petition. He is advised that the remaining allegations of paragraph 6 are conclusions of law which he is not required to answer.

7. Respondent admits the authenticity of the copy of a communication dated August 25, 1924, addressed to him as Commissioner of Internal Revenue by James Craig Peacock but denies that the petitioners are entitled under the law to the additional interest claimed therein. He admits also the authenticity of the copy of a communication dated August 29, 1924, addressed to Mr. James Craig Peacock by J. G. Bright, deputy commissioner.

8. He admits that the demand made by petitioners on him to authorize and direct the payment of additional interest was refused, but as to each and every other allegation of paragraph 8, he says that he is advised that they amount to mere conclusions of law and need not be answered.

9. He denies that the petitioners prior to their coming into this court in their attempt to obtain the authorization and allowance by the Commissioner of Internal Revenue of the additional interest claimed have exhausted all the remedies open to them.

Further answering, he says that he is advised and believes that if petitioners are entitled under the law to any additional interest on the amount of money refunded to them their right of action is by a suit against the United States in the Court of Claims or the proper district court of the United States; and that having such right to sue in the United States in an ordinary action at law, they are not entitled to relief by writ of mandamus.

As to each and every other allegation of paragraph 9 he says that he is advised that they amount to mere conclusions of law and need not be answered.

Further answering, he avers that the petitioners in this form of proceeding are seeking to review a decision rendered by the respondent in the course of administering the internal revenue laws of the United States; that such decision involved the exercise of judgment and discretion, and having acted in accordance with law in a matter involving the exercise of judgment and discretion, the petitioners can not by writ of mandamus compel him to change his judgment or reverse his action in said case.

He further avers that whatever action he has taken in this case was taken as an officer of and in the interests of the United States of America; that the United States of America is an indispensable party to this action; that the authority of the respondent as Commissioner of Internal Revenue is prescribed and limited by law and that

the laws of the United States prescribe when and under what conditions interest on taxes, erroneously and illegally collected and later refunded, is to be paid.

Respondent avers that the testatrix, on May 18, 1923, filed with the collector of internal revenue for the 1st district of Pennsylvania a claim for refund of alleged overpaid income taxes for the year 1919 in the sum of $35,054.85; that the said claim was examined in the office of the Deputy Commissioner of Internal Revenue; that the overassessment or reduction of tax liability revealed thereby, namely, $35,054.85, was recommended by the deputy commissioner to the respondent for allowance on May 19, 1924.

8 Respondent further avers that on May 19, 1924, in accordance with authority contained in the revenue act of 1921, he affixed his signature to a schedule of overassessments and allowance of abatements, credits, refunds, and related claims, numbered IT–A–10274, containing under item 29 after her name, $35,054.85, the amount of the refund claimed by the testatrix, thereby signifying for the first time in writing his allowance of the refund to which testatrix was entitled or his allowance of the claim of testatrix for refund, and thereby giving certain instructions to the collector of internal revenue for the 1st district of Pennsylvania with respect thereto.

Answering further, the respondent avers that the collector for the 1st district of Pennsylvania entered on said schedule, in the last column thereof, the said sum of $35,054.85 and returned the said schedule to Washington; that the said collector relisted the amount shown in the last column of schedule IT–A–10274 on a subsidiary schedule known as schedule of refunds and credits and numbered IT–R–10274, with the statement, signed June 30, 1924, that "the items hereon are relisted as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit."

For further answer the respondent avers that he signed, under date of August 12, 1924, the authorization addressed to the disbursing clerk, Treasury Department, which appears on said schedule IT–R–10274, and which reads as follows:

"The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due. Payment may therefore be made in the amounts shown in column 7."

The respondent avers that he allowed testatrix' claim for refund under date of May 19, 1924; that such refund was allowed in accordance with the provisions of the revenue act of 1921, and before the passage of the revenue act of 1924.

He is advised and therefore avers that the revenue act of 1921, under which he made the said allowance, does not, nor do any prior or subsequent acts of Congress, authorize him to pay the additional interest claimed by the petitioners to be due.

Further answering, the respondent avers that section 1324 (a) of the revenue act of 1921 provides when and under what conditions interest may be allowed and paid on a refund of internal revenue taxes made under that act and reads as follows:

"SEC. 1324 (a) That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) If such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no
9 protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term 'additional assessment,' as used in this section, means a further assessment for a tax of the same character previously paid in part."

He is advised and therefore avers that the foregoing section of the revenue act of 1921 does not authorize him to pay the additional interest claimed by the petitioners to be due, nor does any other section of any other revenue act. In accordance with section 1303 of the revenue act of 1921 the respondent with the approval of the Secretary of the Treasury promulgated Article 1040 of Regulations 62 which defines when a claim for refund is allowed.

"* * * A claim for refund or credit is allowed within the meaning of the statute when the commissioner approves the schedule in whole or in part, for transmission to the proper accounting officer, for credit or refund * * *."

Respondent is advised and therefore believes that said regulation does not authorize him to pay the additional interest claimed by the petitioners to be due.

He avers that the foregoing section 1324 (a) of the revenue act of 1921 provides for the payment of interest upon the total amount of the refund from the time when such tax was paid, only if such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest. He further avers that the testatrix did not pay the income tax for 1919 referred to in paragraph 3 of the petition under a specific protest setting forth in detail the basis of and reasons for such protest.

Respondent is advised and believes, and therefore charges, that the petitioners have no right under the internal revenue laws and regulations to the additional interest claimed in their petition.

Wherefore, having made full and complete answer to the petition, as well as return to the rule to show cause, he prays that said rule may be discharged, that petition may be dismissed, that he may recover his reasonable costs, and that he be permitted to go hence without day.

DAVID H. BLAIR,
Commissioner of Internal Revenue.

[*Duly sworn to by David H. Blair; jurat omitted in printing*]

PEYTON GORDON,
United States Attorney.
VERNON E. WEST,
Assistant United States Attorney.
Attorneys for respondent.

10 *Amendment to answer and order allowing filing of same. Filed October 20, 1924*

* * * * * * *

Comes now the respondent, David H. Blair, Commissioner of Internal Revenue, and by leave of the court amends his answer herein filed as follows:

After the words "numbered IT–A–10274" on line 11 of the fourth page of the answer insert

"a photostat copy of which schedule marked 'Exhibit A' is attached hereto and made a part hereof."

After the words "numbered IT–R–10274" on line 22 of the fourth page of the answer insert

"a photostat copy of which schedule marked 'Exhibit B' is attached hereto and made a part hereof."

DAVID H. BLAIR,
Commissioner of Internal Revenue.

[*Duly sworn to by David H. Blair; jurat omitted in printing*]

PEYTON GORDON,
United States Attorney.
VERNON E. WEST,
Assistant United States Attorney.
Attorneys for respondent.

Fiat of Justice Stafford

Leave to file within amendment is hereby granted.

WENDELL P. STAFFORD,
Justice.

I consent.

JAMES CRAIG PEACOCK,
Attorney for Petitioners.

EXHIBIT A

2425

-425

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
FORM 7780
Form approved by Comptroller General
Feb. 1, 1923

IMMEDIATE

This schedule must be executed and all required steps taken without delay.

COMMISSIONER OF INTERNAL REVENUE.

SCHEDULE OF OVERASSESSMENTS
AND
ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF ANY

ORIGINAL
Number in General Accounting Office

Schedule No. IT-An 10274

1st PE. MAY 20 1924

Sheet 1 of 2 sheets

INCOME TAX UNIT

INT. REV.

District of PENNSYLVANIA

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The returns of the taxpayers listed herein, together with their claims (if any) and appropriate supporting evidence, have been carefully examined and the tax liability of the respective taxpayers has been determined in accordance with the probable facts and the law. The assessments or reductions in tax liability appearing in column 4 are respectively recommended for allowance.

July 19 24

Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Collector FIRST District of PENNSYLVANIA

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificate of Overassessment" or "Notice of Abatement or Refund" attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be credited, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries on your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7782-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7782-A) referred to above, and an appropriate warrant authorized upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7782-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

Date MAY 19 24

Commissioner of Internal Revenue.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date June 30, 1924

1st. District of Pa.

Collector.

ACCOUNTS UNIT
Read not entered

INITIALS	DATE
SW	7/26/24

736.30 (Entries to be made by the Collector)

(1) Item No.	(2) Certificate of Overassessment or Claim Number	(3) Name and Address of Taxpayer	(4) Overassessments or Reductions of Tax Liability (Amount)	(5) Ledger, Page and Line, or Account Number	(6) Taxable Year	(7) Abatement (Amount)	(8) Overassessment (Amount)	(9) Credit (Amount carried to Form 7782-A)	(10) Account Credited: Ledger, Page, and Line	(11) Due Date of Item Against Which Credit Was Made	(12) Net Amount Refundable Carried to Form 7782-A	(13) Remarks
X	X X	TOTALS OF 32 ITEMS IN THIS SCHEDULE		X X X	X				X X X	X X		X X
1	663790	Abbott, Edwin M.	10 00		21		10 00				10 00	O.A.
2	663791	Abercrombie, F. P.	20 00		21		20 00				20 00	O.A.
3	663794	Adams, Paul G.	12 79		21		12 79	12 79	1925 9316904	12/15/25		O.A.
4	663795	Adams, W. S.	20 00		21		20 00				20 00	O.A.
5	663803	Allison, Walter A.	20 00		21		20 00				20 00	O.A.
6	663806	Ancker, Harry G.	30 00		21		30 00				30 00	O.A.
7	663807	Anderson, Solon E.	18 56		21		18 56				18 56	O.A.
8	663811	Arigo, Charles	30 34		21		30 34				30 34	O.A.
9	663810	Armon, Aaron	20 00		21		20 00				20 00	O.A.
10	663812	Arms, Robert L.	20 00		21		20 00				20 00	O.A.
11	449893	Barnes Coal Co.	7,687 91	3/31/17			7687 91				7687 91	
12	663746	Baird, Maggie R.	110 01		21		110 01				110 01	O.A.
13	663744	Barrist, David	32 04		21		32 04				32 04	O.A.
14	663762	Bittong, ~~Axx~~ R. Arthur	27 00		21		27 00				27 00	O.A.
15	125635	Eastwood, William J.	47 31		19		47 31				47 31	
16	663763	Estate of Alexander J. Cassatt ~~Fidelity Trust~~	583 06		19		583 06				583 06	O.A.
17	653090	Keylor, J. M.	406 55		18		406 55	112 68 24 92	1925 9307850 1925 Sept. 800203	12/15/25 9/1/25	317 45	
18	40986	Lewistown & Reedsville Electric Railway Co.	373 99		13		373 99	21 29	1924-048876	12/15/24	373 99	
19	663851	Mills & Bros., Thos.	31 30	11/30/20			31 30				31 30	O.A.
20	663854	Mitchell, G. P.	10 00		20		10 00				10 00	O.A.
21	663833	Maguire, Daniel J.	20 00		20		20 00				20 00	O.A.
22	663714	Marcus & Co.	541 16		19		541 16	541 16	1924 May 005 p1.4	5/19/24		O.A. 368-M Item
23	663821	Maron, Laura	10 00		20		10 00				10 00	O.A.
24	663844	Montgomery Trust Co.	1,109 85		19		1109 85				1109 85	O.A.
25	663845	Montgomery Trust Co.	163 53		20		163 53				163 53	O.A.
X	X X	PAGE TOTALS ONLY		X X X	X				X X X	X X		X X

10.9

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
(Form 7966 (Continuation Sheet))
Form approved by Comptroller General
Feb. 4, 1925

1st Pa.

SCHEDULE OF OVERASSESSMENTS
AND ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF ANY

ORIGINAL
Voucher to General Accounting Office

INITIALS

Schedule No. 72-A-10
Continuation Sheet No. 2

Item No. (1)	Certificate of Overassessment or Claim Number (2)	Name and Address of Taxpayer (3)	Overassessment or Reduction of Tax Liability (Amount) (4)	Ltr., Page and Line, or Delivery Number (5)	Taxable Year (6)	(Entries to be made by the Collector) Abatement (Amount) (7)	Overpayment (Amount) (8)	Credit (Amount carried to Form 7966-A) (9)	Account Credited: Ltr., Page, and Line (10)	Due Date of Item Against Which Credit Was Made (11)	Net Amount Refunded Carried to Form 7966-A (12)	Remarks (13)
26	663846	Montgomery Trust Co.	104 63		21		104 63				104 63	O.A.
27	546309	Murphy, John A.	5,655 37		19		5655 37				5655 37	
28	546310	Murphy, Joseph L.	3,843 50		19		3845 50				3845 50	
29	552922	Murphy, Margaret	35,054 85		19		35054 85				35054 85	
30	649591	Peckitt, Leonard	1,350 98		17		1350 98				1350 98	
31	650945	Sweeten Wilmington Co.	30 01		17		30 01	1 23	26 1924 July Tax	10/20/25 Transfer	6 78	O.A.
32	663739	Villa Villa Amusement Co.	77 26		21		77 26				77 26	O.A.
X	X X	PAGE TOTALS ONLY		X X X	X				X X X	X X		X X

INTERNAL REVENUE-BUREAU
JUL 17 1926
RECEIVED
Treasury Department
Internal Revenue Service

QAA

10-B

10c

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
Form 7206-A
Form approved by Comptroller General
Feb. 2, 1928

IMMEDIATE
This schedule must be executed and all required steps taken without delay.
COMMISSIONER OF INTERNAL REVENUE.

EXHIBIT B

SCHEDULE OF REFUNDS AND CREDITS

ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

ORIGINAL
Voucher to General Accounting Office

Schedule No. IT-R-10274

Sheet 1 of ..... Sheets.

First Dist. of Penna.

D. C. Voucher No. 262

UNIT	NOTATIONS	DATE
Ark	Ky	8/30/24

27

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items hereon are related as they appeared for refund or credit on an original schedule (bearing the serial number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or collections of tax liability subject to refund or credit.

Date June 30, 1924

R. S. Buckingham
Collector, First District of Pennsylvania

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 6 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 9 has been provided

Date AUG 16 1924

Deputy Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 6 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 9 has been found due. Payment may, therefore, be made in the amounts shown in column 7.

Date AUG 17 1924

O H Blair
Commissioner of Internal Revenue.

Item No.	Certificate of Overassessment or Claim Number	Name and Address of Taxpayer	Tax Account Reference	Amount Overassessed	(Not to be used by Collector) Interest Accrued	(Not to be used by Collector) Tax Refundable	Date or Final Determinations of Appeals from which Overassessments Resulted and Overassessments Period	(Not to be used by Collector) Refundable Taxes Illegally Collected 1917 and Prior Years	19__	19__	Paid by Disbursing Clerk, Treas. Dept., by Checks Dated	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	Numbered as Follows:	
X	X X	Totals of 29 Items in this Schedule	5384		3358	2,741 36	X X	5,741 36			AUG 25 1924 X X	X X

94024—26 (Face page 10.) No. 3

10d

TREASURY DEPARTMENT
U.S. INTERNAL REVENUE SERVICE

INCOME TAX UNIT

SCHEDULE OF REFUNDS AND CREDITS

ORIGINAL
Voucher to General Accounting Office

INITIALS

Schedule No. [illegible]

Continuation Sheet No. 2

Page No. (1)	Classification or Other Identification No. (2)	NAME AND ADDRESS OF TAXPAYER (3)	Net Amount Refunded (4)	Amount Credited (5)	(Not to be used by Collector) Interest Allowed (6)	(Not to be used by Collector) Total Refundable (7)	Date on Which Payment Was Made (8)	(Not to be used by Collector) REFUNDING TAXES ILLEGALLY COLLECTED 1925 and Prior Years (9)	(10)	(11)	Paid by Treasurer's Check, Treas. Dept., or Credited Date (12)	REMARKS (13)
29	552922	Murphy, Margaret	35054 85		1057 41	36112 26	12/15/20	36112 26			47197	

X X X Page Total Only 36982 [illegible] 1113 38 [illegible] 7 8 X [illegible] X X X X

94024—26. (Face page 10.) No. 4

11 In Supreme Court of District of Columbia

Demurrer

Filed October 20, 1924

* * * * * * *

The petitioners say that the respondent's answer and the amendment thereto are bad in substance, for the following reasons:

1. The refund was not allowed until after June 2, 1924, and interest should therefore be computed as provided by section 1019 of the revenue act of 1924 from the dates tne installments were paid to August 25, 1924, or in any event to August 12, 1924.

2. A writ of mandamus should issue to respondent commanding and directing him to so compute and authorize the payment of interest.

JAMES CRAIG PEACOCK,
JNO. W. TOWNSEND,
Attorneys for Petitioners.

In Supreme Court of District of Columbia

Notice of Leaving of Demurrer

To PEYTON GORDON and
VERNON E. WEST, Esquires,
Attorneys for Respondent.

SIRS: Please take notice that the foregoing demurrer will be for hearing before Mr. Justice Stafford in Circuit Court Number Two on Friday, October 24, 1924, at 10 o'clock a. m., or as soon thereafter as counsel may be heard.

JAMES CRAIG PEACOCK,
JNO. W. TOWNSEND,
Attorneys for Petitioners.

In Supreme Court of District of Columbia

Amendment to answer and order allowing filing of same. Filed October 31, 1924

* * * * * * *

Comes now the respondent, David H. Blair, Commissioner of Internal Revenue, and by leave of the court amends his answer herein filed as follows:

By striking out the fourth sentence of paragraph four, beginning with the word "Respondent" on line 13 of the second page of the answer and ending with the figures "1924" on line 17 of the second page of the answer and inserting in the place thereof the following:

"Respondent is advised and therefore believes that payment has actually been received by petitioners of the said sum of $35,054.85 with interest thereon of $1,057.41, and avers that check No. 471972 for the sum of $35,054.85 with interest thereon of $1,057.41 was issued and mailed under date of August 25, 1924, to the petitioners and that said check was duly presented to the Treasurer of the
12 United States for payment and was paid by the said Treasurer under date of September 22, 1924."

DAVID H. BLAIR,
Commissioner of Internal Revenue.

[*Duly sworn to by David H. Blair; jurat omitted in printing*]

PEYTON GORDON,
United States Attorney,
VERNON E. WEST,
Assistant United States Attorney,
Attorneys for Respondent.

Fiat of Justice Bailey

Leave to file within amendment is hereby granted.

JENNINGS BAILEY,
Justice.

In Supreme Court of District of Columbia

Memorandum on demurrer. Filed January 2, 1925

* * * * * * *

I think that the action of the commissioner on May 19, as shown on Schedule I. T. A–10275, was in effect an opinion that the refund should be allowed. It was clearly within his power to modify or reverse this action up to the time of his final confirmation by his signature on the schedule after its receipt from the collector, and at this time the claim for refund was finally allowed.

The payment of interest as fixed by the statute thereupon became a mere ministerial duty and mandamus lies.

The demurrer to the answer and amendments will be sustained.

BAILEY, *J.*

In Supreme Court of District of Columbia

Minute entry of order sustaining demurrer

FRIDAY, JANUARY 2D, 1925.

Session resumed pursuant to adjournment, Mr. Justice Bailey presiding.

* * * * * * *

Upon consideration of the demurrer of petitioners filed herein, to respondent's answer and amendments thereto, it is ordered that said demurrer be, and the same is hereby, sustained.

13 *Minute entry of judgment*

WEDNESDAY, JANUARY 21, 1925.

Session resumed pursuant to adjournment, Mr. Justice Bailey presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys of record and thereupon, respondent by his attorneys, states to the court that he does not care to amend but will stand upon his answer, to which the court sustained a demurrer on the 2d day of January, 1925.

Wherefore, it is considered that the prayers of the petition be granted, that the writ of mandamus issue as therein prayed and that the petitioners recover of respondent their costs of suit, to be taxed by the clerk, and have execution.

From the foregoing judgment the respondent by his said attorneys in open court, notes an appeal to the Court of Appeals of the District of Columbia.

In Supreme Court of District of Columbia

Assignments of error. Filed February 4, 1925

* * * * * * *

Now comes the respondent, David H. Blair, Commissioner of Internal Revenue, by and through his attorney, Peyton Gordon, United States attorney in and for the District of Columbia, and assigns as error the following:

1. The court erred in entering judgment herein granting a writ of mandamus as prayed in the petition.

2. The court erred in sustaining petitioners' demurrer to respondent's answer and amendments.

3. The court erred in not overruling petitioners' demurrer to respondent's answer and amendments.

4. The court erred in holding that the approval by respondent on August 12, 1924, of the schedule form No. IT–R–10274 (respondent's Exhibit B), was the allowance of petitioners' claim for refund within the meaning of sec. 1324 of the revenue act of 1921.

5. The court erred in not holding that the approval by respondent on May 19, 1924, of the schedule form No. IT–A–10274 (respondent's Exhibit A) was the allowance of petitioners' claim for refund within the meaning of sec. 1324 of the revenue act of 1921.

6. The court erred in not holding that the acceptance by the petitioners of the principal sum allowed as a refund by the respondent, with interest, precludes them from claiming additional interest in this proceeding.

7. The court erred in not holding that petitioners have an adequate and complete remedy other than by mandamus proceedings to enforce their rights, if any they have.

8. The court erred in not holding that the construction placed upon sec. 1324 of the revenue act of 1921, by respondent, was a reasonable one and within the discretion reposed in him by law.

14 9. The court erred in holding that petitioners are entitled to interest from the dates of the payments of the instalments of their decedent's 1919 tax.

10. The court erred in not holding that if petitioners were entitled to interest in excess of that allowed by respondent, they were only entitled to interest on $12,815.81 from September 15, 1920, and on $22,239.23 from December 15, 1920, to August 12, 1924.

PEYTON GORDON,
United States Attorney.
VERNON E. WEST,
Assistant United States Attorney.
Attorneys for Respondent.

In Supreme Court of District of Columbia

Praecipe for transcript of record. Filed February 4, 1925

* * * * * * *

The clerk will please prepare a transcript of the record in the above-entitled cause, on appeal to the Court of Appeals of the District of Columbia, and include therein the following:

1. Petition.
2. Rule to show cause.
3. Answer of respondent.
4. Amendment to answer and exhibits filed October 20, 1924.
5. Demurrer.
6. Amendment to answer filed October 31, 1924.
7. Memorandum opinion of the court.
8. Order sustaining demurrer to answer and amendments.
9. Judgment.
10. Note of appeal.
11. Assignments of error.
12. This designation.

PEYTON GORDON,
United States Attorney,
Attorney for Respondent.

Service of copy of above designation acknowledged this 30 day of January, 1925.

JAMES CRAIG PEACOCK,
Attorney for Petitioner.

15 [Clerk's certificate to foregoing transcript omitted in printing.]

16 [Minute entry of argument and submission May 5, 1925 omitted in printing.]

17 In Court of Appeals of the District of Columbia

DAVID H. BLAIR, COMMISSIONER OF INTERNAL REVENUE, appellant
vs.
UNITED STATES EX REL. G. THOMAS BIRKENSTOCK AND Gerald Ronon, Executors of the last will of Margaret Murphy, deceased } No. 4296

OPINION

Before Martin, Chief Justice; Robb and Van Orsdel, Associate Justices.

Mr. Chief Justice Martin delivered the opinion of the court:

Appeal from the Supreme Court of the District of Columbia.

This is an appeal from a judgment of the lower court awarding to appellees, who were petitioners below, a writ of mandamus directing the appellant as Commissioner of Internal Revenue to allow interest upon a certain refund of income taxes in excess of that already allowed by him.

Section 1324 (a) of the revenue act of 1921 provided inter alia that upon the allowance of a claim for the refund of income taxes paid interest should be allowed and paid upon the total amount of the refund at the rate of one-half of 1 per centum per month to the date of the allowance. If such taxes were paid under a specific protest setting forth in detail the basis of and reasons for the protest, the interest should run from the time when the taxes were paid; but if no protest was made interest should not begin to run until six months after the filing of a claim for the refund.

Article 1940 of Regulations 62, duly promulgated by the commissioner under this act, provided that a claim for refund is "allowed" within the meaning of the foregoing provision when "the commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund."

18 Section 1324 (a), supra, was specifically repealed by the terms of section 1100 (a) of the revenue act of 1924, approved June 2, 1924. Section 1019 of the latter act, however, provides that upon the allowance of such refunds interest shall be allowed and paid on the amount thereof at the rate of 6 per centum per annum from the date when the taxes were paid to the date of the allowance of the refund. This section applies alike to all such refunds without regard to protest.

Article 1371 of Regulations 65, duly promulgated under this act, readopts the provision that a claim for refund is "allowed" within the meaning of the statute "when the commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund."

It thus appears that under the revenue act of 1921 a refund of income taxes paid without protest would bear interest only from six months after the filing of the claim for refund, whereas under the revenue act of 1924 such a refund, notwithstanding the absence of a protest, would bear interest from the date when the taxes were paid. Under each act the interest would run until the time of the "allowance" of the refund. The income taxes for which the present refund was allowed were paid in the year 1920, without protest; and the question is whether interest should be computed upon it according to the act of 1921 or that of 1924.

The facts in the case are admitted by the pleadings. In the year 1920 the decedent, Margaret Murphy, paid to the collector of internal revenue at Philadelphia the sum of $88,956.92 as her income taxes for the year 1919, payment being made in equal quarterly installments of $22,239.23 each, on April 15, June 16, September 15, and December 15, 1920. Afterwards, on May 18, 1923, she filed a claim with the commissioner alleging that the assessment was excessive and claiming a refund. This claim was duly examined, and on May 19, 1924, the deputy commissioner reported an overpay-
19 ment in the sum of $35,054.85 and recommended the allowance of a "reduction in tax liability" in that amount. On the same day the commissioner issued an "authorization" to the collector at Philadelphia, notifying him that the amount aforesaid was approved and allowed as a "reduction of tax liability," and directing him to check the item against the accounts of the taxpayer and determine whether the amount of the reduction should be abated in whole or in part, and to make any abatement warranted by the condition of said accounts for the years involved, also to examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against any taxes due from her, and to report and certify to the commissioner the net amount refundable to her. This "authorization" was duly received by the collector at Philadelphia, and on June 30, 1924, he reported that he had checked the item in question against the accounts of the taxpayer and found the sum of $35,054.85 to be the "net amount refundable" in accordance with said reduction. Afterwards, on August 12, 1924, the commissioner forwarded an "authorization" to the disbursing clerk, directing him to pay to the claimant the sum of $35,054.85, together with interest in the sum of $1,057.41. The interest was computed under the terms of the revenue act of 1921, and accordingly ran from November 18, 1923, which was six months after the filing of the claim for refund. On August 25, 1924, a check for the aggregate sum thus authorized was delivered to the appellees as executors of the estate of the claimant, and subsequently was cashed by them. At the same time, however, they protested to the collector against the amount of interest thus allowed and demanded that it be computed under the revenue act of 1924, to wit, from the dates of the quarterly

payments made by the decedent in the year 1920. When this demand was rejected the present proceeding in mandamus was begun to compel the commissioner to authorize and require the payment of additional interest under the provisions of the latter act. The lower court sustained this claim and entered judgment accordingly.

20 We agree with the judgment of the lower court. The record discloses that no finding or order respecting the payment of interest upon the refund was made or could have been made by the commissioner until June 30, 1924, at which time the collector at Philadelphia reported the result of his examination. But before that time Congress repealed section 1324 (a) of the revenue act of 1921, consequently the commissioner was no longer authorized to proceed under it. After the repeal his sole authority to order the disbursing clerk to pay interest upon such refunds was derived from section 1019 of the revenue act of 1924. Consequently the provisions of that section were controlling, and the interest upon this refund should have been computed accordingly.

This conclusion is not inconsistent with the statutory provision that interest upon such refunds shall run until the date of their "allowance," nor does it tend to invalidate the department's regulation that the term "allowance," when used to indicate the close of the interest period, shall signify the date "when the commissioner approves the schedule in whole or in part for transmission to the proper accounting officer for credit or refund." In the present instance, however, the repeal of the former act, and the enactment of the latter, before the refund in question was paid or ordered to be paid, necessarily required that the allowance and payment should be made under the latter act.

It is our opinion, furthermore, that the acceptance by the appellees of the check issued to them by the disbursing clerk does not under the circumstances bar them from maintaining their present action. We think also that the lower court was right in requiring that the increased interest should be computed equally upon the quarterly overpayments as of the dates when the respective installments of taxes were paid. The interest, however, should be computed only to August 12, 1924, that being the date when the commissioner ordered the disbursing clerk to make payment of the refund.

21 No question of fact is involved in this case, nor is the appellant required to exercise any discretion when allowing interest upon such refunds. The duty is ministerial only, and is mandatory. Upon the facts in the case the appellees have no other adequate remedy. They are therefore entitled to a writ of mandamus. Roberts vs. Valentine, 176 U. S. 221; Lane vs. Hoglund, 244 U. S. 174; Work vs. McAlester-Edwards Co., 262 U. S. 200.

Subject therefore to the modification that interest shall be computed only to August 12, 1924, the judgment of the lower court is affirmed with costs.

LOSE IN CENTER

22 In Court of Appeals of District of Columbia

[Title omitted.]

Judgment, June 1, 1925

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, modified so as to read that the interest should be computed only to August 12, 1924, and as so modified, affirmed with costs.

Per Mr. Chief Justice MARTIN.

23 In Court of Appeals of the District of Columbia

[Title omitted.]

Motion to stay mandate filed June 18, 1925

Now comes the appellant, David H. Blair, Commissioner of Internal Revenue, and moves the court to stay the mandate in the above-entitled cause for a reasonable time, in order that he may petition the Supreme Court of the United States for a writ of certiorari.

PEYTON GORDON,
United States Attorney, Attorney for Appellant.

Copy of above motion mailed this eighteenth day of June, 1925, to James Craig Peacock, Esquire, Albee Building, Washington, D. C., attorney for appellees.

PEYTON GORDON,
United States Attorney, Attorney for Appellant.

24 [File endorsement omitted.]

25 In Court of Appeals of District of Columbia

[Title omitted.]

Order allowing motion to stay mandate. June 24, 1925

On consideration of the motion to stay the mandate in the above-entitled cause a reasonable time that appellant may apply to the Supreme Court for a writ of certiorari,

It is ordered by the court that said motion be, and the same is hereby, granted.

* * * * * * *

26 [Clerk's certificate to foregoing transcript omitted in printing.]

27 In Supreme Court of the United States

Order allowing certiorari. Filed October 26, 1925

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the procedings below which accompanied the petition shall be treated as though filed in response to such writ.

○